

AMENDED IN SENATE MARCH 24, 2008

**SENATE BILL**

**No. 1322**

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**Introduced by Senator Lowenthal**

February 20, 2008

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An act to amend Sections 38135, 44932, 44939, 45303, and 88122 of, and to repeal ~~Sections 38136 and 51530~~ *Section 38136* of, the Education Code, and to amend Section 1028 of, and to repeal Sections 1027.5 and 1028.1 of, the Government Code, relating to communism.

LEGISLATIVE COUNSEL'S DIGEST

SB 1322, as amended, Lowenthal. Communism.

(1) The Civic Center Act requires the governing body of a school district to grant the use of school property, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities. Existing law also prohibits an individual, society, group, or organization from using school property for the commission of any act intended to further a program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means.

This bill would permit the school board to require the furnishing of information as it deems necessary to determine that the use of school property for which application is made would not violate that provision. This bill would also delete provisions ~~regarding that require~~ a person who intends to use school property on behalf of an organization to deliver a statement, signed under penalty of perjury, that the organization is not a Communist action organization or Communist front organization required to be registered with the Attorney General of the United States or does not, to the best of that person's knowledge, advocate the

overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means.

(2) Under existing law, a permanent or classified school employee, or a classified community college employee may be dismissed from employment for specified causes, including, but not limited to, commission of a felony.

This bill would delete provisions that a permanent or classified school employee, or a classified community college employee may be dismissed from employment if he or she is a knowing member of the Communist Party.

~~(3) Existing law prohibits a teacher from giving instruction and prohibits a school district from sponsoring any activity that reflects adversely upon a person because of his or her race, sex, color, creed, handicap, national origin, or ancestry.~~

~~This bill would delete provisions that prohibit a teacher giving instruction in a school or on property belonging to an agency included in the public school system from teaching communism with the intent to indoctrinate or to inculcate in the mind of any pupil a preference for communism. The bill would also delete provisions that a teacher may be dismissed from employment if he or she teaches communism in that way.~~

~~(4)~~

(3) Under existing law, a public employee is required to answer, under oath, specified questions, including, but not limited to, knowing membership in an organization advocating the forceful or violent overthrow of the government of the United States or of any state.

This bill would delete these provisions. The bill would also delete related findings and declarations by the Legislature regarding communism and the Communist Party.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature hereby finds and declares the  
2     following:

3     (a) From 1946 to 1991, the United States of America was locked  
4     in a precarious and potentially deadly “Cold War” with the Soviet  
5     Union.

1     ***(b) At the height of the Cold War, California responded to the***  
2     ***perceived threat of a communist takeover and enacted a number***  
3     ***of statutes subjecting members of the Communist Party, or others***  
4     ***who refused to testify against themselves under oath, to termination***  
5     ***of employment.***

6     ***(c) Though communists who attempted to harm the United States***  
7     ***and collude with her enemies during the Cold War were prosecuted***  
8     ***for their actions, many innocent persons suffered due to nothing***  
9     ***more than their personal political convictions or relationships.***

10    ***(d) Although the Cold War is long over and the threat of a***  
11    ***communist takeover of the state or federal government no longer***  
12    ***exists, these statutes remain current law.***

13    ***(e) The United States Constitution and longstanding tradition***  
14    ***guarantee all Americans the right to freely associate with others***  
15    ***of similar beliefs no matter how unpopular those beliefs might be.***

16    ***(f) These statutes are inconsistent with constitutional protections***  
17    ***of free speech, political affiliation, and the right to remain silent.***

18    ***(g) While this act repeals statutes that subject persons to***  
19    ***termination based on their affiliation with a political party, the***  
20    ***act maintains existing laws that allow for termination of an***  
21    ***employee who is knowingly a member of an organization that***  
22    ***advocates the overthrow of the state or federal government by***  
23    ***force or violence.***

24    **SECTION 1.**

25    **SEC. 2.** Section 38135 of the Education Code is amended to  
26    read:

27    38135. Any use, by any individual, society, group, or  
28    organization for the commission of any act intended to further any  
29    program or movement the purpose of which is to accomplish the  
30    overthrow of the government of the United States or of the state  
31    by force, violence, or other unlawful means shall not be permitted  
32    or suffered.

33    Any individual, society, group, or organization which commits  
34    any act intended to further any program or movement the purpose  
35    of which is to accomplish the overthrow of the government by  
36    force, violence, or other unlawful means while using school  
37    property pursuant to the provisions of this chapter is guilty of a  
38    misdemeanor.

39    The school board may require the furnishing of information as  
40    it deems necessary to make the determination that the use of school

1 property for which application is made would not violate this  
2 section.

3 ~~SEC. 2.~~

4 *SEC. 3.* Section 38136 of the Education Code is repealed.

5 ~~SEC. 3.~~

6 *SEC. 4.* Section 44932 of the Education Code is amended to  
7 read:

8 44932. (a) A permanent employee shall not be dismissed  
9 except for one or more of the following causes:

10 (1) Immoral or unprofessional conduct.

11 (2) Commission, aiding, or advocating the commission of acts  
12 of criminal syndicalism, as prohibited by Chapter 188 of the  
13 Statutes of 1919, or in any amendment thereof.

14 (3) Dishonesty.

15 (4) Unsatisfactory performance.

16 (5) Evident unfitness for service.

17 (6) Physical or mental condition unfitting him or her to instruct  
18 or associate with children.

19 (7) Persistent violation of or refusal to obey the school laws of  
20 the state or reasonable regulations prescribed for the government  
21 of the public schools by the State Board of Education or by the  
22 governing board of the school district employing him or her.

23 (8) Conviction of a felony or of any crime involving moral  
24 turpitude.

25 (9) ~~Conduct~~ *Violation of Section 51530 or conduct* specified in  
26 Section 1028 of the Government Code.

27 (10) Alcoholism or other drug abuse which makes the employee  
28 unfit to instruct or associate with children.

29 (b) The governing board of a school district may suspend  
30 without pay for a specific period of time on grounds of  
31 unprofessional conduct a permanent certificated employee or, in  
32 a school district with an average daily attendance of less than 250  
33 pupils, a probationary employee, pursuant to the procedures  
34 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,  
35 and 44944. This authorization shall not apply to any school district  
36 which has adopted a collective bargaining agreement pursuant to  
37 subdivision (b) of Section 3543.2 of the Government Code.

38 ~~SEC. 4.~~

39 *SEC. 5.* Section 44939 of the Education Code is amended to  
40 read:

1 44939. (a) Upon the filing of written charges, duly signed and  
2 verified by the person filing them with the governing board of a  
3 school district, or upon a written statement of charges formulated  
4 by the governing board, charging a permanent employee of the  
5 district with immoral conduct, conviction of a felony or of any  
6 crime involving moral turpitude, with incompetency due to mental  
7 disability, with willful refusal to perform regular assignments  
8 without reasonable cause, as prescribed by reasonable rules and  
9 regulations of the employing school district, *or with violation of*  
10 *Section 51530*, the governing board may, if it deems action  
11 necessary, immediately suspend the employee from his or her  
12 duties and give notice to him or her of his or her suspension, and  
13 that 30 days after service of the notice, he or she will be dismissed,  
14 unless he or she demands a hearing.

15 (b) If a permanent employee demands a hearing within the  
16 30-day period, he or she shall continue to be paid his or her regular  
17 salary during the period of suspension and until the entry of the  
18 decision of the Commission on Professional Competence, if and  
19 during that time as he or she furnishes to the school district a  
20 suitable bond, or other security acceptable to the governing board,  
21 as a guarantee that the employee will repay to the school district  
22 the amount of salary so paid to him or her during the period of  
23 suspension in case the decision of the Commission on Professional  
24 Competence is that he or she shall be dismissed. If it is determined  
25 that the employee may not be dismissed, the school board shall  
26 reimburse the employee for the cost of the bond.

27 ~~SEC. 5.~~

28 *SEC. 6.* Section 45303 of the Education Code is amended to  
29 read:

30 45303. In addition to any causes for suspension or dismissal  
31 which are designated by rule of the commission, employees in the  
32 classified service shall be suspended and dismissed in the manner  
33 provided by law for conduct specified in Section 1028 of the  
34 Government Code.

35 ~~SEC. 6. Section 51530 of the Education Code is repealed.~~

36 *SEC. 7.* Section 88122 of the Education Code is amended to  
37 read:

38 88122. In addition to any causes for suspension or dismissal  
39 which are designated by rule of the commission, employees in the  
40 classified service shall be suspended and dismissed in the manner

1 provided by law for conduct specified in Section 1028 of the  
2 Government Code.

3 SEC. 8. Section 1027.5 of the Government Code is repealed.

4 SEC. 9. Section 1028 of the Government Code is amended to  
5 read:

6 1028. It shall be sufficient cause for the dismissal of any public  
7 employee when that public employee advocates or is knowingly  
8 a member of an organization which during the time of his or her  
9 membership he or she knows advocates overthrow of the  
10 government of the United States or of any state by force or  
11 violence.

12 SEC. 10. Section 1028.1 of the Government Code is repealed.